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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

Case No. BK-S-06-10725-LBR

USA Commercial Mortgage Company,

CHAPTER 11

Debtors.

**Stipulated Motion for Approval of
Compromise Settlement of Claims re
Daniel Newman**

USACM Liquidating Trust (the “USACM Trust”), by and through its counsel, Lewis and Roca LLP, and Daniel Newman as the Trustee for the Daniel D. Newman Trust Dated 11/1/92 (“Newman”), file this stipulated motion seeking to settle Newman’s proof of claim against the estate of USA Commercial Mortgage Company (“USACM”).

The USACM Trust and Newman stipulate:

1. Newman filed proof of claim No. 10725-02030 based upon his investments in loans brokered by USACM (“Newman Claim”). The USACM Trust has objected to the Claim to the extent that it is based upon certain loans. The table below gives the proof of claim number, the name of loan upon which the claim is based in part, the amount of the claim related to that particular loan and the docket entry of the USACM Trust’s objection to that portion of the claim:

Claim No.	Loan Name	Claim Amount	Objection
02030	Bundy Canyon \$5 M.	\$90,000.00	DE 8753
02030	HFAH Clear Lake	\$70,000.00	DE 8894
02030	Castaic Partners III	\$60,000.00	DE 8848
02030	Brookmere Matteson	\$15,914.35	DE 8657



1 2. Pursuant to the ADR Agreement established under the Debtors' confirmed
2 Plan, on November 18, 2011, Geoffrey Berman, the Trustee, John Hinderaker, Counsel for
3 the USACM Trust, and Daniel Newman met at the Law offices of Lewis and Roca LLP.
4 Both sides shared information and Mr. Newman fully explained the basis for his claims.

5 3. The Trustee has considered the Newman Claim, the documents supplied by
6 Newman to support his claim and the dialog between the parties during and before their
7 meeting about the claim. The Trustee believes, as a result of the information exchanged at
8 the settlement conference, that a portion of the Newman Claim may be valid. Disputing
9 the remainder of the Newman Claim would require the Trust to undertake fact intensive
10 litigation in relation to several different loans. The Trustee believes that the attorneys'
11 fees and expenses the Trust would incur to challenge the claims in such litigation would
12 easily exceed the monetary value to the Trust beneficiaries ultimately derived from
13 challenging the Newman Claim.

14 4. Accordingly, the parties have agreed to settle the Newman Claim 10725-
15 02030 as follows:

- 16 • The \$90,000 portion of the Newman Claim relating to the Bundy Canyon \$5
17 Million Loan will be 40% allowed (\$36,000) and 60% disallowed (\$54,000).
18 Newman will withdraw his response to the Bundy Canyon Objection [DE
19 8753] and that objection will be deemed sustained in accordance with these
20 terms;
- 21 • The \$70,000 portion of Newman Claim relating to HFAH Clear Lake will be
22 20% allowed (\$14,000) and 80% (\$56,000) disallowed. Newman will
23 withdraw his response to the HFAH Clear Lake objection [DE 8894] and
24 that objection will be deemed sustained in accordance with these terms;



- 1 • The \$60,000 portion of Newman Claim relating to Castaic Partners III will
2 be 25% allowed (\$15,000) and 75% disallowed (\$45,000). Newman will
3 withdraw his response to the Castaic Partners III objection [DE 8848] and
4 that objection will be deemed sustained in accordance with these terms;
- 5 • The \$15,914.35 portion of Newman Claim relating to Brookmere Matteson
6 will be 10% allowed (\$1,591.43) and 90% disallowed (\$14,322.91).
7 Newman will withdraw his response to the Brookmere Matteson Objection
8 [DE 8753] and that objection will be deemed sustained in accordance with
9 these terms;
- 10 • Based upon the foregoing, portions of Proof of Claim No. 10725-02030
11 allowed as general unsecured claims (\$66,591.43), the Trust will make an
12 immediate 4.92% distribution (\$3,276.29) to Newman as his *pro rata* share
13 of the funds reserved by the Trust from the initial creditor distribution. All
14 other funds reserved for the Newman Claim will be released from the
15 Disputed Claims Reserve and made available to the Trust for whatever
16 purpose is appropriate in the administration of the Trust.
- 17 • Newman will share in future distributions pro rata based upon the amounts
18 of his allowed claims, listed in paragraph 4 above.
- 19 • The relevant omnibus objections [DE Nos. 8753, 8894, 8848 and 8657] shall
20 be deemed sustained as they relate to the Newman Claim pursuant to the
21 terms of this stipulation.
- 22 • Each party shall bear their own costs and attorneys' fees.

23 ///

24 ///

25 ///



5. The Trustee and Newman respectfully request that the Court approve their compromise agreement and grant the Motion. Notice to creditors and a hearing are not required under the confirmed Plan, Bankruptcy Code or Rules. A proposed form of order is supplied for the Court's consideration.

DATED: November 18, 2011.

LEWIS AND ROCA LLP

By: /s/ John Hinderaker (AZ 18024)

Robert M. Charles, Jr., NV 6593

John Hinderaker, AZ 18024 (*pro hac vice*)

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**AGREED, AND APPROVED AS
TO FORM AND CONTENT:**

s/Daniel Newman

Daniel Newman
Trustee Daniel D. Newman Trust Dated 11/1/92
125 Elysian Drive
Sedona, AZ 86336